IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 365 OF 2003
IN
SUIT NO. 337 OF 1988

Satish Shriram Patil	....	Plaintiff
v/s.		
Jagdish Shriram Patil	.....	Defendant
AND		
The Court Receiver and Ors	....	Respondents

S.C.Chandrashekar for the defendants.
S. Rao i/b. N. Vora for respondent no.4.
Mr. V.Y. Sarshikar for respondent no.2.

CORAM: S.U. KAMDAR, J.

DATE : 31ST JANUARY, 2005.

P.C. :

1. The present Chamber summons has been taken out by the defendant inter-alia seeking relief that the Court Receiver, High Court, Bombay should be directed to remove the respondent no.4, his servants, agents and any other person claiming through him or on his behalf from use, occupation and possession of shop no.7 situated on ground

floor, Parshuram Building, 142, Jaiprakash Road, Andheri (West), Mumbai- 400 058 and that the said premises should be sealed by the Court Receiver. A further relief has been sought that the Court Receiver should be directed to take necessary steps to collect and recover the arrears of rent from respondent no.2 in respect of the said shop no.7 on (West), Mumbai-400 058 and to continue to collect the same and continue to collect from respondent no.2 herein. Some of the material facts of the present case are as under :

2. In the notice of Motion taken out by the plaintiff being no. 527 of 1988 in the present suit the Court Receiver, High Court, Bombay was appointed as Court Receiver in respect of the suit premises, i.e. Parushram Building. The said building consists of a ground plus first floor structure with a room on the terrace above the first floor. On the ground floor of the said building there are shop premises occupied by the various shopkeepers whereas the first floor consists of residential tenements. All these premises are given on tenancy. On 1.11.1988 the Court Receiver has taken possession of the said premises and all the tenants have been attorned to the Court Receiver in accordance with the order passed by this Court.

3. It is an admitted position that at the time of the Court Receiver taking possession of the said premises the tenants on the record of the court Receiver and in possession of shop no.7 was second respondent herein namely Vishwas Kashinath Raikar. It is the case of the respondent no.4 who is at present in use, occupation and possession of the said shop premises that sometime in or about 10.3.1998 an agreement for assignment of business was executed by and between the second respondent namely Vishwas Raikar who was running the business of Raikar Jewellers alongwith goodwill and tenancy rights in his favour. On 11.3.1988 a leave and licence agreement was executed by and between the fourth respondent and the said Vishwas Raikar and in pursuance of the said leave and licence agreement which was for a period of five years the respondent no.4 has come into use, occupation and possession of the said premisses According to the fourth respondent he is in use, occupation and possession of the said premises since March 1998 and on 5.4.1998 while conducting opening ceremony of the said shop premises an invitation was sent to everyone including the plaintiff and the defendant herein who are co-owners in respect of the building premises. It is further the case

of the respondent no.4 that on the date of the opening ceremony in fact the defendant purchased a "toe ring" from the said premises and thus he was aware that the defendant no.4 is in use, occupation and possession of the premises and that he has consented for such use, occupation and possession by the respondent no.4. According to the learned counsel for the respondent no.4 the plaintiff and or the defendant therefore are not entitled to raise any such issue of unlawful occupation and possession of the respondent no.4 in respect of the said shop premises.

4. It is further the case of the respondent no.4 that infact the defendant demanded unlawfully a sum of Rs.150,000/- even though he has already paid sum of Rs.2 lakhs in 1999. Once the respondent no.4 refused to make payment of Rs.150,000/- that the defendant has moved the Court receiver, High Court, Bombay for taking forcible possession of the said premises.

5. On 26.9.2003 the Court Receiver, High Court has made report to this court. In the said report it has been inter-alia stated that the suit was filed by and between the plaintiff and the defendant in respect of the

division and partition of the Hindu undivided family property consisting of movables and the immovables. The court receiver was appointed by the order dated 26.10.1988 and pursuant thereto the court receiver has taken possession on 5.11.1988 and thereafter the court receiver is collecting the rent from the tenants and or occupants of the said building through the rent collector appointed by the court receiver. The receiver has further stated in the report that on 27.4.1998, the court receiver received a letter from one Satish Shriram Patil inter-alia informing the Court Receiver that the tenant of shop no.7 Vishwas Raikar has sold the shop to a third party namely M/s. Dhanshree Jewellers without permission of the Court Receiver. Accordingly the inquiries were made by the court receiver and the rent collector submitted a report dated 17.8.1998 stating that one Roshanlal was found in possession of the said shop no.7. Notices were thereafter issued to the original tenant Vishwas Raikar and M/s. Dhanshree Jewellers and on 3.10.1998 the court receiver called upon the said Vishwas Raikar the original tenant to take back the possession of the said premises from M/s. Dhanshree Jewellers failing which the court receiver would take action against both. Thereafter inspections were

carried out on 27.9.1999 and court receiver sought to take possession of the premises from one Lokeshkumar Ghasiramji Gaholot who was present in the said shop premises but he refused to hand over possession of the premises on the ground that the said Roshanlal is not present who is the person concerned in possession of the shop premises. Thereafter various meetings were held before the court receiver and the court receiver permitted the parties to file appropriate proceedings before the court for necessary action in the matter. Accordingly, the defendants have taken out the present Chamber Summons being Chamber summons no. 365 of 2003 on 13.3.2003 seeking the aforesaid relief.

6. The learned counsel for respondent no.4 has inter-alia contended that he is entitled to the tenancy of the said premises as according to him it was agreed between the defendant and the tenant that he will be given the tenancy of the said premises and infact he has paid a sum of Rs.2 lacs towards the consideration for acquisition of the said tenancy. The learned counsel for the respondent no. 4 has further contended before me that the defendant was unaware of the fact that the court receiver has been appointed as receiver in respect of the said premises and

thus entered into the aforesaid transaction of tenancy without the knowledge of the appointment of the Court receiver. According to him it is the plaintiff and the defendant who have suppressed the fact that the court receiver has been appointed of the said premises and has defrauded the respondent no.4 by obtaining Rs.2 lacs and permitting the respondent no.2 the original tenant to transfer the tenancy in his favour. He has further contended that pending the finalisation of the tenancy transaction he was put in possession as a licensee under the leave and licence agreement in 1998 and the said leave and licence agreement was for a period of five years. According to the learned counsel for the respondent no.4 no order should be passed in the present chamber summons evicting him summarily from the suit premises and in respect of the aforesaid contention the learned counsel has relied upon the judgment of the apex court in the case of **Anthony C. Leo v. Nandlal Bal Krishnan reported in AIR 1997 SC 173** and has inter-alia contended that the apex court has held in the aforesaid judgment that the right of the tenant cannot be defeated by summary proceedings of eviction as sought to be done by defendant by taking out the present application. He has therefore contended that

the present Chamber Summons should be dismissed.

7. I have given careful consideration to the case put forward by the respondent no.4. The case of the tenancy in any event is based on no material and no evidence. Infact it is an admitted position that the respondent no.4 entered into the possession of the premises merely as a licensee. Assuming that the leave and licence agreement was valid even then he could not have entered into physical possession of the premises in view of the appointment of the Court Receiver and that the property was custodia legis. However, in the present case his rights as a licencee has admittedly expired by afflux of time. Infact I am of the opinion that he is a mere trespasser in respect of the suit premises. It is his own case that there is no tenancy is created in his favour but he was assuming that the tenancy will be created and that he is entitled to any such tenancy. I am of the opinion that prima-facie the respondent no.4 is in breach of the orders passed by this court. Once a court receiver is appointed as receiver, the property becomes custodia legis and any person coming into the possession of the premises would be interfering with the possession of the Court Receiver and

through the Court Receiver that of the court. In so far as the reliance placed by the respondent no,4 in the case of Anthony C. Leo v. Nandlal Bal Krishnan in AIR 1997 SC 173 is concerned I am of the opinion that the judgement has no application in the present case because the plaintiff is not able to establish that he has been appointed in use, occupation and possession of the said premises in existing rights much less the claim of tenancy. I am also of the further opinion that the case pleaded of tenancy has no material support in that behalf. However I cannot lose sight of the fact that the respondent no.4 is in possession of the premises for last more than five years. I also cannot lose sight of the fact that the possession of respondent no.4 is within the knowledge of the plaintiff herein. In the aforesaid circumstances I am of the opinion that it is in the interest of justice that the respondent no.4 should be given a chance to establish his right by filing appropriate suit in a court of appropriate jurisdiction. I am therefore of the opinion that if the respondent no.4 wants to establish his right he can do so through filing of a suit and obtain necessary orders from the court of competent jurisdiction. I therefore give time to respondent no.4 to file such a suit within a period of

four months from today. The said time is given subject to the respondent no.4 executing the necessary agency agreement with the court receiver to be appointed as agent of the court receiver for the aforesaid sho premises. It is further made clear that the respondent no.4 shall give an undertaking to the court that he shall not alienate, encumber or create any third party right or part with the possession of the shop premises during the aforesaid period subject to his right of filing an appropriate suit in the court of competent jurisdiction. I am of the further opinion that if the respondent no.4 has any right he must establish the same by filing the aforesaid suit. If he fails to file the suit and obtain appropriate orders from the court of appropriate jurisdiction in the aforesaid period, then in that event the Court Receiver shall take actual and physical possession of the said premises from the respondent no.4 and seal the same. I further direct the Court Receiver to make a further report after sealing the said premises in the aforesaid eventualities. In an event of the respondent no.4 filing appropriate suit within the aforesaid period and obtains necessary order in that suit then in that event the said orders will governed both the parties and the Court Receiver will abide by the said

orders. It is made clear that the court who shall decide such a suit filed by respondent no.4 shall decide the same in accordance with law and without being influenced in any manner by the observation made by this court in the present order. The Chamber Summons disposed off accordingly. However there shall be no orders as to costs.

SD/-

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